

01/13/00

PATENT APPLICATION TRANSMITTAL LETTER
 (Large Entity)

 Docket No.
 2870/220

TO THE ASSISTANT COMMISSIONER FOR PATENTS

Transmitted herewith for filing under 35 U.S.C. 111 and 37 C.F.R. 1.53 is the patent application of:

John D. Dreher

 For: **OPTICAL MAKEUP COMPOSITION**

Enclosed are:

- ☒ Certificate of Mailing with Express Mail Mailing Label No. **EL 234414832US**
☐ sheets of drawings.
☐ A certified copy of a _____ application.
☒ Declaration ☒ Signed. ☐ Unsigned.
☒ Power of Attorney
☒ Information Disclosure Statement
☐ Preliminary Amendment
☒ Other: Information Disclosure Statement, PTO 1449 and three references.

CLAIMS AS FILED

| For | #Filed | #Allowed | #Extra | Rate | Fee |
|--------------------------------------------------------------------------|--------|----------|--------|-----------|----------|
| Total Claims | 34 | - 20 = | 14 | x \$18.00 | \$252.00 |
| Indep. Claims | 3 | - 3 = | 0 | x \$78.00 | \$0.00 |
| Multiple Dependent Claims (check if applicable) <input type="checkbox"/> | | | | | \$0.00 |
| BASIC FEE | | | | | \$690.00 |
| TOTAL FILING FEE | | | | | \$942.00 |

- ☐ A check in the amount of _____ to cover the filing fee is enclosed.
☒ The Commissioner is hereby authorized to charge and credit Deposit Account No. **05-1320** as described below. A duplicate copy of this sheet is enclosed.
- ☒ Charge the amount of **\$942.00** as filing fee.
☒ Credit any overpayment.
☒ Charge any additional filing fees required under 37 C.F.R. 1.16 and 1.17.
☐ Charge the issue fee set in 37 C.F.R. 1.18 at the mailing of the Notice of Allowance, pursuant to 37 C.F.R. 1.311(b).

 Dated: **1/13/00**

Estelle J. Tsevdos
By: Mary C. Warner Reg. No. 30,333
 Signature

Estelle J. Tsevdos, Ph.D., J.D.
 KENYON & KENYON
 One Broadway
 New York, New York 10004

cc:

1c678 U.S. PTO

09/482773

01/13/00

Fee Proper
Only

EL234414832US

P01LARGE/REV06

Attorney Docket No.: 99.49US



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Application of Dreher, et al.

Group Art Unit: 1617

Serial No.: 09/482,773

Examiner: YU, Gina C.

Filed: January 13, 2000

For: **OPTICAL MAKEUP COMPOSITION**

REPLY TO EXAMINER'S RESPONSE TO APPEAL BRIEF

Commissioner for Patents
Attention: Board of Patent Appeals and Interferences
Alexandria, VA 22313-1450

Sir:

An Appeal Brief was filed November 26, 2004. A response to the Appeal Brief was mailed June 3, 2005.

In reply to the Examiner's Response, please enter the following remarks.

The Examiner has maintained the rejections of claims 1-7 and 9-11 in view of Kimura ('916) and Hineno ('174), and the rejection of claim 8 in view of the aforementioned references in combination with Hurst. The rejections are again respectfully traversed.

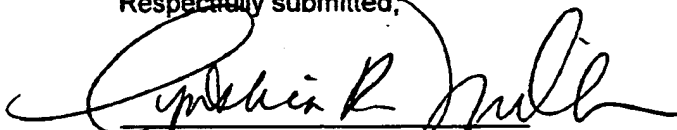
The Examiner has merely engaged in hindsight reconstruction of the claimed invention to establish her case of prima facie obviousness. Nevertheless, it is well-established that "While the test for establishing an implicit teaching, motivation, or suggestion is what the combination of these two statements...would have suggested to those of ordinary skill in the art, the two statements cannot be viewed in the abstract. Rather, they must be considered in the context of the teaching of the entire reference [emphasis added]. Further, a rejection cannot be

wrinkles and interference pigments. The combination of Hurst with Kimura and Hineno would result in a composition employing a red interference pigment and a luster. The combination of teachings could not lead one skilled in the art to the claimed method for hiding wrinkles.

Thus, in view of the teachings of Hineno, or Hineno and Hurst, one skilled in the art could not reasonably have been led to the conclusion that the method of Kimura of topically applying a composition comprising blue interference pigment to age-wrinkled skin would produce wrinkle hiding effects.

A copy of all claims (1 to 11), pending in this Appeal, also is attached hereto.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Cynthia R. Miller", is written over a horizontal line.

Cynthia R. Miller, Reg. No. 34,678
Greenway Plaza
155 Pinelawn Road, Suite 345 So.
Melville, N.Y. 11747
Tel.: (613) 414-6068
Fax: (631) 531-1340